FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.846 OF 2006

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.M.J.Jamdar for the Petitioner.
Mr.R.A.Shaikh for the Respondent No.1.
Mr.Shitole, A.P.P. for the State.

CORAM : R.S. MOHITE,J.
DATED : 02/5/2006.

P.C.

1. This is a petition for quashing Criminal Case under Section 138 of the Negotiable Instruments Act and for quashing issuance of process. It appears that the present petitioner executed an agreement of sale for sale of his property for amount of Rs.12.25/-lacs and obtained Rs.7/- lacs leaving balance Rs.5.25/- lacs. The respondent No.1 who is the complainant has therefore, compelled to file the suit for specific performance. Pending the suit, the petitioner under the guise of settlement gave him post dated

cheque dated 15.6.2005 of Rs.10.25/-lacs. Thereafter, application Exh.74 was filed in the civil proceeding which indicates that this amount was calculated as Rs.7/-lacs being the amount received by the petitioner and Rs.3.25/- lacs as damages. Admittedly, the possession of the land which was to be sold is with the petitioner. It is sought to be argued that the cheque was given for settling the matter, even if the petitioner was duty bound to return the money taken by him. In the circumstances, it cannot be said at this stage that the cheque was issued without any consideration. There is presumption in favour of the respondent No.1 which will have to be rebutted during the trial. Hence, petition is rejected.

(R. S. MOHITE, J.)